

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

*In re* Flint Water Cases.

Judith E. Levy  
United States District Judge

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This Order Relates To:

ALL CASES

\_\_\_\_\_/

**ORDER GRANTING MOTION TO SEAL [2378]**

Before the Court is Veolia North America, LLC, Veolia North America, Inc., and Veolia North America Operating Services, LLC's ("VNA") motion to seal portions of its response to Plaintiffs' brief regarding Dr. Aaron Specht's MATLAB Code and Exhibits 1 and 2 thereto. (ECF No. 2378.) The request to seal originates from Plaintiffs' designation of certain of Dr. Specht's materials as highly confidential under the confidentiality order entered in this case.

On March 8, 2023, the Court held a hearing where Dr. Specht's MATLAB code and its proprietary nature was discussed. The Court has also reviewed the parties' briefs regarding Dr. Specht's work as an expert on this case. (ECF Nos. 2367, 2380.) The Court has previously granted

protective orders related to certain of Dr. Specht's findings, particularly where such findings regard the medical status of individuals, including minors. (*See, e.g.* ECF Nos. 1290, 1916, 1928.)

Eastern District of Michigan Local Rule 5.3 governs civil material filed under seal or with redactions. "There is a strong presumption in favor of open judicial records." *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016). A request for a seal must be "narrowly tailored . . . in accord with applicable law." E.D. Mich. LR 5.3(b)(2).

The Court may grant a motion to seal or redact "only upon a finding of a compelling reason why certain documents or portions thereof should be sealed." *Id.* at (b)(3)(B)(i). The Court must make its decision based on the following three factors: "why the interests in support of nondisclosure are compelling, why the interests supporting access are less so, and why the seal itself is no broader than necessary[.]" *Shane Grp.*, 925 F.3d at 306.

The information that VNA includes in its sealed exhibits regards Dr. Specht's bone-lead scan findings related to specific individuals as well as information that Dr. Specht indicates is proprietary and akin to a

trade secret. The proprietary information relates to his methodologies for determining the margin of error resulting from bone-lead measurements taken with a handheld XRF device. The Court grants the motion to seal.

As to medical information regarding individuals, the Court finds that such information remains confidential for the same reasons set forth in its previous orders related to this material. (ECF Nos. 1290, 1916, 1928.) There is also good cause to seal Dr. Specht's proprietary methodology and MATLAB code testimony and exhibits. In the sealed portions of Dr. Specht's deposition transcript, he states that there are only approximately two other individuals in the world who have access to this code. These individuals have partnered with Dr. Specht on research projects related to handheld XRF scanning. It is clearly not information that is already available to the public. Accordingly, there are compelling reasons why a researcher such as Dr. Specht seeks nondisclosure and why the interest to the public in having this information is less compelling.

Dr. Specht developed the proprietary process and methodology at issue. The portions of VNA's brief and exhibits thereto that it seeks to seal and/or redact are only those portions that discuss this proprietary

information. Accordingly, VNA's request is sufficiently narrowly tailored to serve the purpose of protecting the sensitive information and making all other information public.

Accordingly, VNA's motion to seal is granted.

IT IS SO ORDERED.

Dated: March 9, 2023  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 9, 2023.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager